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July 7, 2003

U.S. Department of Transportation Dockets
Docket No. FAA-2003-15085
400 Seventh St. SW., Room Plaza 401
Washington, DC 20590

SUBJECT: Proposed Rule: Hazardous Materials Training Requirements

Gentlemen/Madam:

The Regional Airline Association (RAA) submits the following comments on the subject proposal on behalf of our membership (attachment A).

RAA requests that this proposal be withdrawn.

RAA supports the concept of sound and effective Hazmat training programs for its members . Unfortunately this proposal does little to advance this concept. Rather it is proposal to exact greater bureaucratic control over the training programs of air carriers and commercial operators, at considerable expense to the operators. It imparts little if any value in terms of safety over the current rules. Indeed if adopted, it will disrupt each operators training program by requiring a costly re-certification program to ensure total compliance with the new rules. It will stifle future innovation of the training process by exacting specific regulatory language. Once the rule is in place, deviations are not allowed for even seemingly minor changes except through a cumbersome and unresponsive rulemaking petition process. Finally the proposal is justified by a Cost Benefit Analysis that is, to put it bluntly, a sham.

Apparently there is a struggle within the FAA on how to best control the already over-regulated airline industry. Earlier this year, we responded to a FAA proposal to codify over 250 pages of Advisory Circular material in support of a proposal to consolidate current flight simulation device qualification requirements into a new Part 60 (Docket No. FAA-2002-12461). The basis for that proposal was the same as it is for this proposal, namely

AC's are not mandatory, however, and these critical safety practices need to be clearly established within the FAA's safety regulations.

Nearly everything an air carrier and its employees do involves a "*critical safety practice"* so where is the FAA going with this? If the Hazmat training program needs to be codified, will the training programs for all airmen follow? Will all of FAA's advisory and field policy materials be codified?

We have had recent discussions with some FAA staff who have indicated that FAA legal is advising them that since Advisory Circular and handbook material is "unenforceable", they have

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no choice but to codify the desired safety practices of the operators. This attitude implies that the way the industry and the FAA has been conducting themselves for the last 25 years is unsafe and that drastic regulatory changes are needed. The air carrier's stellar safety record is of course, ignored by the advocates of greater regulatory control. Certain FAA staff are also under the illusion that by placing the regulations in an Appendix or a "Qualification Performance Standard" (QPS), they can avoid the bureaucratic hurdles associated with rulemaking in general so that if a minor change is needed in a rule, they can produce a regulatory amendment in as little as 6 months, despite what FAA's management priorities are at the time. The purported "6 month" time period to process a rule change is based upon the belief that since a "QPS" or " Appendix" rule is "internal" to the FAA, the agency does not have to seek amendment approval from the other Federal agencies. Even if this proposal is in fact viewed as an "internal amendment", a 6 month revision process for all subsequent changes will simply not happen. For example we only have to look at the time needed to process current exemptions within the FAA. One of our members recently had to wait a year for the FAA to process and approve a simple two year extension to an existing exemption. We find it extremely difficult to believe that the rulemaking process will become so efficient in the future that a change that benefits industry and is not on the scope of FAA priorities will in fact be processed and adopted in a 6 month timeframe.

We should add that we view a "6 month wait" to process a future rule change as unacceptable to our members. FAA legal currently discourages "blanket" exemptions because they are viewed as "rulemaking". Each air carrier must therefore process their own petition. Since this proposal affects "hundreds of operators", we can envision that "hundreds" of exemptions will have to be processed for every minor regulatory change. The FAA division that currently handles petitions now cannot keep up with the workload. Why would be make it worse by adopting a "command and control" rule such as the proposal?

After the Valujet Accident the FAA invested heavily in ATOS which is a FAA oversight process that assesses an airline's safety attributes beyond strict regulatory compliance. The rules provide, after all, only the minimum safety standards. ATOS was intended to raise the level of safety in the industry without additional regulations. If a specific air carrier was found to be below the industries safety attributes that go beyond strict regulatory compliance, then the FAA was alerted that increased oversight surveillance of that carrier was warranted. Is this proposal and the Part 60 proposal to codify extensive advisory material a step back from FAA's earlier commitment to the ATOS concept?

There was no mention anywhere in the proposal of an air carrier's reluctance to adopt sound training programs simply because they are described in advisory material. Every operator has to have their training program approved by the FAA before they begin training. To suggest that air carriers will not incorporate the relevant portions of FAA guidance material simply because it is viewed as "unenforceable" is totally unfounded.

In our review of the background comments for this proposal, we found nothing that states that the FAA has found any of the air carriers Hazmat training programs to be inadequate such that more specificity in the training regulations is required. The only comments that seem to suggest a regulatory change is needed are general comments that "the FAA regulations that prescribe

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hazmat training for air carriers and commercial operators .. were first adopted over 25 years ago", and that "since that time, hazmat transport regulation in general has changed significantly". To us, such comments imply the current 25 year old "performance based" training regulations have stood the test of time and should be retained because they along with FAA guidance materials are readily adoptable to a changing training environment.

Executive Order 12866 directs each agency to "the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities adopt" when they develop and propose rulemaking. The FAA has had a longstanding practice to whenever possible, adopt performance based regulations and then develop guidance documents such as an advisory circulars that provides "one method of compliance". The proposed rule is simply "command and control" rule and certainly for activities involving operator training where local FAA approval is a prerequisite for every operator, it is totally unnecessary and unwarranted.

The Cost-Benefit Analysis is so inadequate as to be misleading

The Benefits Analysis of this proposal is based upon the finding that since "*there have been six accidents in the past in which hazardous materials were involved, the FAA estimates that there almost certainly will be a hazardous materials related accident in the next decade based on the past accident history. Furthermore, given that one of the six accidents involved fatalities, the FAA believes there is a chance that there will be one or more fatal accidents attributable to hazardous materials violations if the current regulations are not improved. The FAA estimates that a single fatal accident would result in 79 lives lost and a monetary loss of $232 million."*

The "benefits" side of the Cost Benefits Analysis should compare the effectiveness of the present training programs adjusted to reflect the lessons learned as a result of the Valujet accident, versus the value of re-certifying every air carrier's Hazmat training program so that they are consistent with the proposal. The Analysis referenced the FAA survey that was conducted in 1999 (FSAT 99-06) and noted that 90% of Part 121 "will not carry" operators meet the proposed standards, 99% of Part 121 "will carry" operators meet the proposed standards and 78% of Part 135 "will not carry" operators "may" meet the proposed standards. Why then would the benefits analysis take credit for operations for air carriers that have been shown to be in compliance? The analysis should account only for operations <u>not</u> shown to be in compliance by the survey since they are the only group of operators that would realistically "benefit" from the proposal. On the "cost" side of the equation, every operator is affected since every operator will have to bear the cost of re-certification to demonstrate compliance even though the survey found them to be in compliance. This adjustment of the "benefits" side of the Cost Benefits Analysis is alone sufficient to demonstrate that the proposal has a negative benefit; but there is more to consider.

In response to the Valujet accident, the FAA mandated retrofit of fire or smoke detectors and fire suppression equipment for all Class D cargo compartments of transport category airplanes (Amendment 121-269). The FAA estimated the cost of retrofit at approximately $294 million. The Benefits estimate of this proposal therefore suffers from "double count". i.e. the safety

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benefits that were incorporated by the mandatory retrofit after the Valujet accident are not accounted for in the benefits analysis of the proposal.

Similarly the DOT/RSPA rule change associated with the specific shipping of chemical oxygen generators [Docket No. HM-224A, FR publication date June 5, 1997] is also not mentioned as a mitigating factor in estimating the benefit of this proposal.

Adoption of extremely stringent security rules affecting the inspection of all baggage that is placed on board an airline has also significantly lessened the "risk" that hazardous material is improperly onboard commercial aircraft. This too, should be mentioned as a mitigating factor in estimating the benefit of this proposal.

Lastly, the "benefit" side of the analysis projects an avoidance of one accident in the next 10 years in which 79 lives may be lost. This scenario designated a typical "Part 121" airplane as a Boeing 737 airplane operating with a 65% passenger load. A typical Part 135 flight is not considered yet the proposal affects Part 135 operators. For regional airplanes, the average seating capacity was 33.5 seats for the year ending 2001. We obviously do not consider the avoidance of a single accident in which 79 lives are lost as representative of the Part 121 regional fleet. The scenario certainly doesn't represent a single accident in a Part 135 commuter airplane since the average seating capacity for scheduled operations is 9 seats. A projected "benefit" for a Part 121 regional operator would have to be the avoidance of at least 2 hazmat fatal airplane accidents in the next 10 years; Similarly for a Part 135 scheduled operator, the "benefit" of compliance would be the avoidance of at least 9 fatal airplane accidents in the next 10 years caused by the lack of codified Hazmat training. We view the benefits of this proposal at totally unrepresentative of the regional and commuter fleet particularly since such operators have never had a fatal accident caused by the improper carriage of hazardous materials. We therefore request that the benefits portion of the cost benefit analysis be revised to more accurately reflect the variety of seating capacity that exists within Part FAR 121 and 135 operations.

For a number of FAA "retrofit" rule proposals, we have requested that when the benefits of the rule is based upon the avoidance of an aircraft accident and loss of passenger lives, the analysis should account for the variety of airplane sizes affected by the proposal. For example, a Part 121 proposed rule might have a separate analysis for the loss of a passenger airplane with 50 passengers, one for a passenger airplane with 150 passengers, and one for a passenger airplane with 300 passengers. A rule that affects Part 135 operators should obviously have it's own cost benefit analysis since the airplane is vastly smaller than the airplane type used for Part 121 operations. The analysis should account for the relative risks associated with each mission. Obviously the cargo capacity of a Cessna 402 is vastly different than that available on a Boeing 747. We have informally asked FAA APO why they don't segment their analysis of their cost benefit proposals for operating rules; their reply is simply that it is too complicated. We view their position as unresponsive to a legitimate request and are again requesting that it be accomplished for this proposal.

In summary, we see no value in this proposal and request that it be withdrawn. If our request is rejected, we request that at least a legitimate cost benefit analysis be prepared before any rulemaking is adopted and that we be given another opportunity to comment on its merits. Every

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rule should be cost justified. Even if the cost of re-certifying every operators Hazmat training program was minimal (which it is not), we would object to this rule because it imposes inflexible regulatory language to control our member's training programs when it has not been shown to be necessary. Codifying FAA and ICAO guidance material would simply impose a burdensome process of petitioning for FAA approval for even seemingly minor changes. It simply doesn't make sense to change the current process (performance based rule with accompanying FAA guidance materials) when it has worked so well for the last 25 years.

Your consideration of the comments and requests of RAA and its member's, is appreciated.

Sincerely,

David Lotterer
Vice President - Technical Services

Attachment

Attachment A- RAA Member Airlines

Company	**City, State**
Aeromar *	Mexico City, DF
Air Canada Jazz*	Enfield, Nova Scotia, Canada
AirNet Systems	Columbus, OH
Air Serv	Redlands, CA
Air Wisconsin	Appleton, WI
Allegheny	Middletown, PA
Alpine Aviation	Provo, UT
American Eagle	Dallas, TX
Atlantic Coast Airlines	Dulles, VA
Atlantic Southeast (ASA)	Atlanta, GA
Big Sky Airlines	Billings, MT
Boston-Maine Airways	Portsmouth, NH
Cape Air	Hyannis, MA
Chautauqua Airlines	Indianapolis, IN
Chicago Express	Chicago, Il.
Colgan Air	Manassas, VA
Comair	Cincinnati, OH
CommutAir	Plattsburgh, NY
Continental Express (aka ExpressJet)	Houston, TX
Corporate Air	Billings, MT
Corporate Airlines	Smyrna, TN
Empire Airlines	Coeur d'Alene, ID
ERA Aviation	Anchorage, AS

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Executive Airlines	Farmingdale, NY
Federal Express (commuter ops)	Memphis, TN
Flight Options	Johnson City, NY
Grand Canyon Airways	Grand Canyon, AZ
Great Lakes Aviation	Bloomington, MN
Great Plains Airlines	Columbia, MO
Gulfstream International	Miami Springs, FL
Horizon Air	Seattle, WA
IBC Airways	Miami, FL
Island (Aloha) Air	Honolulu, HI
Lynx Air International	Fort Lauderdale, FL
Mesa Airlines	Phoenix, AZ
Mesaba	Minneapolis, MN
Midway Airlines	RDU Int'l Airport, NC
New England Airlines	Westerly, RI
North-South Airways	Atlanta, GA
Pace Aviation	Winston-Salem, NC
Piedmont Airlines	Salisbury, MD
Pinnacle Airlines	Memphis, TN
PSA Airlines	Vandalia, OH
Salmon Air	Salmon, ID
Scenic Airlines	N. Las Vegas, NV
Seaborne Airlines	US Virgin Islands
Shuttle America	Windsor Locks, CT
Skyway Airlines	Oak Creek WI
Skywest	St. George, UT
Sunworld Int'l Airlines	Ft. Mitchell, KY
Trans States	St. Louis, MO
Virginia Airways	Chesapeake, VA
Walker's Int'l	Ft. Lauderdale, FL

* foreign based air carrier